

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

LINDSEY GREEN

PLAINTIFF

v.

Civil No. 06-2045

GENERAL MOTORS CORPORATION and
CHRISTOPHER WHITLEDGE

DEFENDANT

MEMORANDUM OPINION AND ORDER

Currently before the Court are Separate Defendant Christopher Whitledge's Motion for Summary Judgment and Brief in Support (Docs. 35-36) and Plaintiff's Response (Doc. 43).

Plaintiff filed her Complaint in the Circuit Court of Sebastian County, Greenwood District, alleging negligence claims against both Defendants and claims for breach of warranty and products liability against Separate Defendant General Motors Corporation (GM) in connection with an automobile accident on January 3, 2004, involving a vehicle driven by Whitledge and a vehicle driven by Rosalind Phillips in which Plaintiff was a passenger. (Doc. 1). On April 20, 2006, Whitledge removed the action to this court asserting the existence of diversity jurisdiction under 28 U.S.C. § 1332. Plaintiff filed a motion to remand that the Court denied on June 9, 2006. (Doc. 18).

On June 29, 2006, GM filed a Notice of Nonparty Fault pursuant to Section 16-55-202 of the Arkansas Code alleging that Plaintiff's damages, if any, were caused, in whole or in part, by the negligence of Rosalind Phillips. (Doc. 19). On July 12, 2006, the Court issued a final scheduling order setting a trial date of March 26, 2007. (Doc. 24).

Whitledge contends he is entitled to summary judgment as there are no genuine issues of material fact surrounding Plaintiff's allegations that Whitledge was negligent in causing the accident and Plaintiff's damages. After reviewing the pleadings and the evidence on file in the light most favorable to the nonmoving party as required, the court finds that there are no issues of fact which would preclude summary judgment. Therefore, Whitledge's Motion is GRANTED and Plaintiff's claims against him are DISMISSED WITH PREJUDICE.¹

Defendant submitted testimony of Plaintiff acknowledging that Rosalind Phillips and not Whitledge was responsible for causing the accident. (Doc. 36, Ex. A). Defendant also submitted testimony from a witness, Tonya Uselton, Whitledge, and the investigating officer, Corporal David Dominic of the

¹Plaintiff filed an amended complaint on December 20, 2006, after the filing of Whitledge's Motion for Summary Judgment. However, the amended complaint did not change the claims or allegations against Whitledge, therefore, the Court's ruling applies to the Amended Complaint (Doc. 45) as well as the initial Complaint.

Fort Smith Police Department, all stating that Ms. Phillips, not Whitledge, was responsible for causing the accident. (Doc. 36, Exs. B-D). Plaintiff provided no evidence in her response to rebut this testimony. Plaintiff's response consists only of a statement that "questions of fact still remain and plaintiff requests a hearing." (Doc. 43, p. 1). Accordingly, Plaintiff's request for a hearing is DENIED, and Whitledge's Motion (Doc. 35) is GRANTED as Plaintiff failed to meet her burden of meeting proof with proof to demonstrate the existence of a material issue of fact. See *Young v. Gastro-Intestinal Ctr.*, 361 Ark. 209, ___S.W.3d___ (2005).

In her response, Plaintiff also requests a hearing to prevent GM from filing a Notice of Nonparty Fault concerning Christopher Whitledge as the notice must be filed 120 days prior to trial. Plaintiff's request is DENIED as premature.

This case remains set for a jury trial to commence during the week of March 26, 2007.

IT IS SO ORDERED this 29th day of January, 2007.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge